

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-7 ✓

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Scotland Neck and Pinetops,
North Carolina)

RM-7879

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 21, 1992;

Released: August 11, 1992

By the Chief, Allocations Branch:

1. At the request of WYAL Radio, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 654 (1992), proposing the substitution of Channel 238C3 for Channel 238A at Scotland Neck, North Carolina, the reallocation of Channel 238C3 to Pinetops, North Carolina, and the modification of Station WWRT(FM)'s construction permit accordingly. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. Comments in opposition were filed by Radio Triangle East Company ("Radio Triangle"). Reply comments were filed by the petitioner.¹

2. Radio Triangle, licensee of Station WSAY-FM, Rocky Mount, North Carolina, contends that the reallocation of Channel 238C3 to Pinetops would not result in a preferential arrangement of allotments. It argues that petitioner's proposal should not be considered as a first local transmission service to Pinetops but as an additional allotment to the Rocky Mount Urbanized Area. Radio Triangle agrees that Pinetops is situated outside the Rocky Mount Urbanized Area. However, it contends that the usable transmitter site area for Channel 238C3 is close to Rocky Mount and thus would provide service to the urbanized area. It also argues that Pinetops is not independent from Rocky Mount. In support, it states that Pinetops does not have its own separate telephone book and that the population of Rocky Mount is far greater than that of Pinetops (48,997

vs. 1,514, respectively).² Finally, it states that while Scotland Neck will retain local aural transmission service from daytime-only Station WYAL-AM, the community will be deprived of its only local aural nighttime transmission service, while Rocky Mount currently enjoys local aural transmission service from at least five fulltime aural stations.

3. In response, petitioner avers that Radio Triangle has presented a "completely inaccurate" picture of Pinetops. First, Pinetops is not located within the Rocky Mount Urbanized Area or adjacent thereto. Rather, according to petitioner, Pinetops is located 23.3 kilometers (14.5 miles) southeast of the larger community. Therefore, since neither Scotland Neck nor Pinetops are located within any Urbanized Area, it contends that the proposal should not be considered as a relocation from a rural to an urban community. Second, it submits that the incorporated community of Pinetops is independent from Rocky Mount, having its own local government, police and fire services, businesses, churches, library. Thus, it urges the reallocation of Channel 238C3 to Pinetops as the community's first local aural transmission service.

4. We find that the arguments advanced by Radio Triangle to be unpersuasive. We do not believe that Pinetops should be credited with the services already licensed to Rocky Mount since the community is not located within the Urbanized Area. Pinetops has its own local government, police and fire services, businesses, civic organizations and religious institutions which identify themselves with Pinetops. Other than the population differential between Rocky Mount and Pinetops and the lack of a local telephone directory, Radio Triangle presents no information to dispute that Pinetops is an independent community. We recognize that Scotland Neck will lose its only local nighttime transmission service. However, the Commission has stated that both daytime and fulltime AM stations constitute local aural transmission services for purposes of changes in community.³ Furthermore, this action will enable Station WWRT(FM) to serve a larger area and population than is now possible. In this regard, we note that neither Channel 238C3 nor any other Class C3 channel can be allotted to Scotland Neck in compliance with the Commission's minimum distance separation requirements. In addition, Scotland Neck will continue to enjoy reception service from one AM and seven FM stations, in addition to Station WWRT(FM), since the community will lie within the 60 dBu contour of a Class C3 Station WWRT(FM). Finally, although Radio Triangle argues that the petitioner seeks the reallocation of its frequency to Pinetops solely to be able to serve Rocky Mount, we find that Station WWRT(FM)'s presently authorized facilities permit service to 90% of Rocky Mount.

¹ After the record closed in this proceeding, Radio Triangle filed a Motion to Strike petitioner's reply comments to which petitioner responded. The Commission's rules do not contemplate the filing of pleadings beyond the comment and reply comment periods set forth in the *Notice of Proposed Rule Making*. Further, we find that Radio Triangle's Motion to Strike does not provide the Commission with any information of decisional significance. Therefore, we will not consider Radio Triangle's unauthorized pleading.

² Radio Triangle cites *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988),

which sets forth criteria for determining whether a community within an urbanized area should be considered as a separate community for allotment purposes.

Population figures are taken from the 1990 U.S. Census.
³ See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990).

5. Accordingly, we believe the public interest would be served by substituting Channel 238C3 for Channel 238A at Scotland Neck and its reallocation to Pinetops, North Carolina, as the community's first local aural transmission service. As proposed, we will also modify petitioner's construction permit for Station WWRT(FM) to specify operation on Channel 238C3 at Pinetops. Channel 238C3 can be allotted to Pinetops in compliance with the Commission's minimum distance separation requirements with a site restriction of 18 kilometers (11.1 miles) north to accommodate petitioner's desired transmitter site and avoid short-spacings to Station WRNS, Channel 236C, Kinston, North Carolina, and Station WKML, Channel 239C, Lumberton, North Carolina.⁴

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 24, 1992**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Pinetops, North Carolina	238C3
Scotland Neck, North Carolina	--

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of WYAL Radio, Inc., for Station WWRT(FM), Scotland Neck, North Carolina, IS MODIFIED to specify operation on Channel 238C3 at Pinetops, North Carolina, in lieu of Channel 238A at Scotland Neck, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, WYAL Radio, Inc., permittee of Station WYAL, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁴ The coordinates for Channel 238C3 at Pinetops are North Latitude 35-55-54 and West Longitude 77-40-11.